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ABSTRACT

Designed for middle school through high school students, this unit contains eight lesson plans that focus on Nevada state law. The state lessons correspond to lessons in the volume, "Antidote: Civic Responsibility. Drug Avoidance lessons for Middle School & High School Students." Developed to be presented by educators, law student, or attorneys, the state lessons are interactive and sequential, although individual lessons can stand alone. The document includes legal information about driving while intoxicated, drug offenses, sentencing, and drug and alcohol statutes written specifically to combat juvenile abuse. (RJC)

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ED 382 538

Antidote: Civic Responsibility

Nevada Law

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SO 025 047

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Lesson 1

1. Has Aimee violated any state laws? Have her parents?

Aimee has violated no Nevada law as there is no law which makes a minor liable for an unintentionally dangerous act toward another minor.

Aimee and Carrie's parents, however, might be in violation of Nevada law. Any person responsible for the safety or welfare of a child or who permits or allows that child to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect or to be placed in a situation where the child may suffer physical pain or mental suffering as a result of the abuse or neglect is in violation of Nevada law. Nev. Rev. Stat. §200.508 (1991). Depending on how frequently and for how long Aimee was left to care for Carrie, the parents may have been putting both children in danger of physical injury or mental pain and be charged with violating the above mentioned section.

2. Does state law allow 17 year old Tyrell to drink a glass of wine with his dinner without his parents' consent?

Depending on the details, Tyrell may be able to drink a glass of wine at home. Nevada law makes it unlawful for a person under 21 to purchase any alcoholic beverage or consume any alcoholic beverage in a saloon, resort or premises where spirituous, malt or fermented liquors or wines are sold. Nev. Rev. Stat. §202.020 (1991). Further, possession of any alcoholic beverage in a public place is a violation of the law. Id. Public place is defined to include any street, highway, place open to the public, or private business establishment open to the public. Any local governmental entity may make an ordinance that is an additional or broader restriction. Id. Thus, technically Tyrell is not violating this law, but depending on the locality specific laws, he may be in violation of some local law.

Nevada has several exceptions to the above state law which allows individuals under 21 to possess/consume alcohol. An individual is not violating the law if s/he possesses alcohol for an established religious purpose, possession is in the presence of his/her parents, spouse or legal guardian over 21 years old, possession is in accordance with a prescription; possession is in a private club or establishment; or passion is in conjunction with lawful employment. Id.

3. Is Maria violating any law when she tells her roommates whom to call to buy marijuana?

Possession of marijuana is a violation of Nevada law. Nev. Rev. Stat. §453.336 (1992). Maria was a key player in her roommates' plan to acquire the controlled substance. But for her assistance, they would have lacked a critical piece of

information, from whom to buy the marijuana. In Nevada, it is unlawful for 2 or more persons to conspire to commit a crime. Nev. Rev. Stat. 199.480 (1991). Maria would be in violation of this law.

4. **Have Adam and Alex broken any laws other than those against drinking and fighting?**

Since Joe died as a result of his interaction with Adam and Alex, the twins will be held accountable for their behavior. They might be charged with any one of several charges. Involuntary manslaughter is the killing of a human being, without intent to kill, in the commission of an unlawful act, or a lawful act which probably might produce such a consequence in an unlawful manner. Nev. Rev. Stat. §200.070 (1991). The twins alternatively could be charged with battery under Nev. Rev. Stat. §200.481 (1991). Battery occurs when one willfully and unlawfully uses force or violence upon the person of another. Id. Thus, Adam and Alex will likely be convicted of one of these possible charges.

5. **Has Jose violated any state law even though he is not drinking? Has Carlos or TJ violated any state law?**

Jose is in violation of Nev. Rev. Stat. §484.448 (1992) which prohibits a person from drinking an alcoholic beverage while driving or in control of a motor vehicle or having an open container in the passenger compartment of the vehicle while it is on the highway. Since TJ and Carlos were drinking while Jose was driving, Jose can be held responsible for violating the open container prohibition. Carlos and TJ will also be in violation of the prohibition.

TJ is in violation of Nevada law as described in question #2 above. Depending on how broadly the word possession is defined, Jose may also be in violation of the statute since he is under 21, alcohol is in the vehicle in which he is in control, and he is not authorized to possess it under any enumerated exception.

Carlos can be charged under Nev. Rev. Stat. §202.055 (1991) for knowingly giving or furnishing alcohol to a person under 21 if he in any way assisted TJ acquire alcohol. Since he was with TJ when TJ was drinking alcohol it is likely he assisted TJ in acquiring the alcohol.

6. **Is Dr. Melrose violating any state or federal law by prescribing pain killers without conducting an examination or determining need?**

Dr. Melrose is violating not only state law, but federal law too. Under 21 U.S.C.A. § 829, a physician must have a legitimate medical purpose for dispensing drugs, and the act of dispensing or prescribing drugs should be within the usual

course of professional conduct. U.S. v. Varma, 691 F.2d 460 (1982), U.S. v. Jamieson, 605 F. Supp. 119 (1985).

Dr. Melrose's patients, if they do not provide him with a bona fide reason for needing the painkillers, may also be breaking the law. 21 U.S.C.A. § 843 prohibits knowingly or unknowingly acquiring possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge.

Further, Dr. Melrose has violated Nev. Rev. Stat. §453.381 (1991) which mandates a physician prescribe a controlled substance only for a legitimate medical purpose and in the usual course of his professional practice.

7. **Is Danielle violating any law by taking only one or two pills from someone else's prescription?**

Danielle is violating several state and federal laws. Since she is in effect dispensing prescription drugs to herself, she is violating 21 U.S.C.A. § 829, which prohibits dispensing any controlled substance which is a prescription drug without the written prescription of a practitioner. She is also violating 21 U.S.C.A. § 843, which prohibits knowingly or unknowingly acquiring possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge and 21 U.S.C.A. § 844 which prohibits simple possession of a controlled substance unless such a substance was obtained by a prescription. The seriousness of her crime under federal drug control laws will depend on the type of drug which she is taking and how the drugs are used.

In Nevada it is unlawful for a person to knowingly or intentionally possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription by a physician while acting in the course of his professional practice. Nev. Rev. Stat. § 453.336 (1992). Danielle's taking of drugs from the prescription of another is clearly in violation of this section. Additionally, she might be charged with theft for taking the pills entrusted to her for delivery by her employer.

8. **Is Renee breaking any law even though she is not selling drugs herself?**

Even thought she is not selling drugs directly, Renee is violating several state and federal laws. She is violating 21 U.S.C.A. § 841 prohibiting possession of a controlled substance with the intent to manufacture, distribute or dispense drugs and 21 U.S.C.A. § 844 prohibiting simple possession of a controlled substance.

Renee could receive an increased sentence in accordance with the federal sentencing guidelines as a result of her using children in her scheme. Under 21 U.S.C.A. § 859, the distribution of a controlled substance to a person under 21

year of age is subject to increased penalties. The United States expressed its concern with the importance of protecting children from drug trafficking under 21 U.S.C.A. § 860, which imposes heavier prison sentences in cases involving the distribution or manufacture of controlled substances in the proximity of schools, playgrounds or youth centers. 18 U.S.C.A. App. 4 § 3B1.3 also provides for increased sentences in cases of abuse of one's position of trust, as in a drug trafficking defendant involving her daughter in the drug trade. U.S. v. Ledesma, 979 F.2d 816 (1992).

In Nevada it is unlawful for a person to knowingly or intentionally possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription by a physician while acting in the course of his professional practice. Nev. Rev. Stat. § 453.336 (1992). Renee is violating this law by possessing drugs and selling them via her daughter, Mary. Renee may receive an enhanced penalty as Nev. Rev. Stat. § 453.3345 makes enhancement an option when one is breaking the law on the grounds of a playground, defined as any outdoor facility, intended for recreation, open to the public and in any portion thereof containing one or more apparatus intended for the recreation of children such as a sliding board, teeterboard, sandbox, or swingset. Nev. Rev. Stat. § 453.3345 (1992).

9. Did Jim violate any law other than those regarding controlled substances?

Their heroin use is a felony under federal drug-control statutes. 21 U.S.C.A. §841 prohibits possession of a controlled substance with the intent to manufacture, distribute or dispense such substance. 21 U.S.C.A. § 844 prohibits simple possession of a controlled substance.

Jim transmitted the HIV virus to Andre through the shared needle. Nevada law makes it unlawful for an individual with a communicable disease in an infectious sate to conduct himself in a manner likely to expose others to the disease. Nev. Rev. Stat. §441A.180 (1992). Thus, Jim's sharing of a needle with Andre violated this law. The law mandates the violator receive a written warning about his behavior and upon repeating the violation, be held criminally responsible. A second violation is a misdemeanor in Nevada. Other states have held Jim's behavior as more significant. Under the Model Penal Code, however, Jim's behavior could constitute simple or aggravated assault or the attempt thereof, or reckless endangerment; under certain extreme situations, it could be construed as murder. See Gene Schultz, AIDS: Public Health and the Criminal Law, 7 St. Louis U. Pub. L. Rev. 65 (1988); Roger N. Braden, AIDS: Dealing With the Plague, 19 N. Ky. L. Rev. 277 (1992). In some cases, it has been suggested that the HIV virus provides a deadly weapon. Cf. Brock v. State, 555 So.2d 285 (Ala. Crim. App. 1989).

Using or possessing drug paraphernalia is a violation of Nev. Rev. Stat. § 453.566 (1991).

10. **Has the bartender or owner of Bulldog's Bar & Grill violated any law?**

There appears to be no Nevada law prohibiting a bartender or owner from serving an intoxicated person, thus, no law was broken by serving Su a drink.

Lesson 2

CRIMINAL JUSTICE STATISTICS: DRUG AND ALCOHOL RELATED OFFENSES UNIFORM CRIME REPORT DATA OF 1990--CRIME IN THE UNITED STATES

According to the Uniform Crime Report of 1990, 68% of the drug abuse violators were arrested for possession of heroin, cocaine or a narcotic derivative. A little over 31% of drug arrests were for the sale and manufacture of drugs.

Out of the 14,195,100 total number of arrests that occurred in 1990, drug abuse violations accounted for 1,089,500, driving under the influence comprised 1,810,800, and liquor law violations represented 714,700 of the total.

1981-1990 Ten Year Trend

Arrests for Drug Abuse Violations

In 1981, the total number of arrests for drug abusers under the age of 18 was 69,383. On the other hand in 1990, the total number was 50,435. This represents a 27.3% **decrease** in the number of arrests for persons under the age of 18. However, the number of arrests for persons over the age of 18 represent an 89.9% **increase** from 332,733 in 1981 to 631,932 in 1990.

Liquor Law Violations

For persons over the age of 18, the number of arrests for liquor law violations have dramatically **increased** to 61% from 218,079 in 1981 to 351,064 in 1990. However, the number of arrests for persons under the age of 18 has decreased to less than 0.4%.

♦ ♦ ♦

Criminal Victimization in the United States, 1990 A National Crime Victimization Survey Report, February, 1992

Percent Distribution of Victimizations by Perceived Drug or Alcohol Use by Offender:

- Of the **130,260** total rapes reported by victims to police, **49.8%** were believed to be committed by someone under the influence of drugs or alcohol.
- Of a total of **1,149,710** reported robberies, **24.2%** involved an offender under the influence of drugs or alcohol.
- Of **1,600,760** aggravated assaults committed **40%** were committed by people under the influence of drugs.
- Of the **3,128,130** simple assaults reported, **32.9%** were perpetrated by someone perceived to be under the influence of drugs or alcohol.

Lesson 4

FEDERAL SCHEDULE (answers to handout 3)

DRUG	SCHEDULE
heroin	schedule 1
beer	not a scheduled drug
vodka	not a scheduled drug
nitrate	not a scheduled drug
amphetamines	schedule 3
caffeine	not a scheduled drug
marijuana	schedule 1
crack	schedule 2
scotch	not a scheduled drug
MSG	not a scheduled drug
cocaine	schedule 2
glue	not a scheduled drug

FEDERAL PENALTIES BY SCHEDULE FOR POSSESSION

SCHEDULE	MAX. PRISON	MAX. FINE	MAX. TOTAL
schedule 1	15 years	$25,000	15yrs + $25,000
schedule 2	15 years	$25,000	15yrs + $25,000
schedule 3	5 years	$15,000	5yrs + $15,000
schedule 4	3 years	$10,000	3yrs + $10,000
schedule 5	1 year	$ 5,000	1yr + $ 5,000
unscheduled drug	n/a	n/a	n/a

The penalty doubles if the defendant has a previous conviction for a schedule law violation.

In order for a drug to be a narcotic, it must be a derivative of opium. All narcotics contain opium or opium derivatives, ie: heroin.

Malt beverages such as beer are not included in the scheduling process. They are controlled by liquor laws.

Information from 21 U.S.C.A. § 841 (West 1981).

States	Heroin	Cocaine	Crack	Marijuana	Amphetamine
Alabama	sch 1	sch 2	sch 2	sch 1	sch 3
Alaska	sch 1A	sch 2A	sch 2A	sch 3A	sch 4A
Arizona	sch 1	sch 2	sch 2	sch 1	sch 2
Arkansas	sch 1	sch 2	sch 2	sch 1	not listed
California	sch 1	sch 2	sch 2	sch 1	sch 2
Colorado	sch 1	sch 2	sch 2	sch 1	sch 2
Connecticut	sch 1	sch 2	sch 2	sch 1	sch 3
Delaware	sch 1	sch 2	sch 2	sch 1	sch 2
D.C.	sch 1	sch 2	sch 2	sch 2	sch 2
Florida	sch 1	sch 2	sch 2	sch 1	sch 2
Georgia	sch 1	sch 2	sch 2	sch 1[1]	sch 2
Hawaii	sch 1	sch 2	sch 2	sch 1	sch 2
Idaho	sch 1	sch 2	sch 2	sch 1	sch 2
Illinois	sch 1	sch 2	sch 2	listed under its act: the Cannabis Control Act, 56 1/2 §701 et seq	sch 2
Indiana	sch 1	sch 2	sch 2	sch 1	sch 2
Iowa	sch 1	sch 2	sch 2	sch 1	sch 2
Kansas	sch 1	sch 2	sch 2	sch 1	sch 1
Kentucky	sch 1	sch 2	sch 2	sch 1	sch 2
Louisiana	sch 1	sch 2	sch 2	sch 1	sch 2
Maine[2]	sch W	sch W	sch W	sch W & Z	sch W
Maryland	sch 1	sch 2	sch 2	sch 1	sch 1
Massachusetts[3]	class A	class B	class B	class D	class B
Michigan	sch 1	sch 2	sch 2	sch 1	sch 2
Minnesota	sch 1	sch 2	sch 2	sch 1	sch 2
Mississippi	sch 1	sch 2	sch 2	sch 1	sch 2
Missouri	sch 1	sch 2	sch 2	sch 1	sch 2
Montana	sch 1	sch 2	sch 2	sch 1	sch 2

[1] Must have more than 15% THC (tetrahydrocannobinol), the chemical in the cannabis plant.

[2] Maine schedules its drugs under an alphabetical category: W, X, Y & Z. The schedules are similar to other state categorizations.

[3] Massachusetts calls their schedules classes, but they are the same thing.

States	Heroin	Cocaine	Crack	Marijuana	Amphetamine
Nebraska	sch 1	sch 2	sch 2	sch 1	sch 2
Nevada[4]	sch 1	sch 2	sch 2	sch 1	sch 3
New Hampshire	sch 1	sch 2	sch 2	sch 1	sch 3
New Jersey	sch 1	sch 2	sch 2	sch 1	sch 3
New Mexico	sch 1	sch 2	sch 2	sch 1 & 2	sch 2
New York	sch 1	sch 2	sch 2	sch 1	sch 2
North Carolina	sch 1	sch 2	sch 2	NC has a sixth schedule which incl. marijuana	sch 2
North Dakota	sch 1	sch 2	sch 2	sch 1	sch 2
Ohio	sch 1	sch 2	sch 2	sch 1	sch 2
Oklahoma	sch 1	sch 2	sch 2	sch 1	sch 2
Pennsylvania	sch 1	sch 2	sch 2	sch 1	sch 2
Puerto Rico	sch 1	sch 2	sch 2	sch 1	sch 3
Rhode Island	sch 1	sch 2	sch 2	sch 1	sch 2
South Carolina	sch 1	sch 2	sch 2	sch 1	sch 2
South Dakota	sch 1	sch 2	sch 2	sch 1	sch 2
Tennessee	sch 1	sch 2	sch 2	sch 2, but only for certified patients under the Controlled Substances Therapeutic Research Act	sch 2
Texas	sch 1	sch 2	sch 2	sch 1	sch 2
Utah	sch 1	sch 2	sch 2	sch 1	sch 2
Vermont	sch 1	sch 2	sch 2	sch 1	sch 3
Virginia	sch 1	sch 2	sch 2	not listed, but liquid marijuana or hashish oil is listed as sch 1	sch 2
Washington	sch 1	sch 2	sch 2	sch 1	sch 2
West Virginia	sch 1	sch 2	sch 2	sch 1	sch 2
Wisconsin	sch 1	sch 2	sch 2	sch 1	sch 2

[4] While Nevada does not specifically name drugs under its five schedules, but instead lists the specific tests to determine under which schedule a drug belongs § 453.2182 says that the state will use 21 USC as a guide for scheduling. The state merely reserves the right to reschedule any controlled substance as it sees fit according to the tests set out in 453.166, et. seq.

States	Heroin	Cocaine	Crack	Marijuana	Amphetamine
Wyoming	sch 1	sch 2	sch 2	sch 1	sch 2

Lesson 5

OFFENSE/SUBSTANCE	SENTENCE
First Offense: Cocaine - Possession With Intent To Distribute - 5 kg	• imprisonment for 15 year to life, and • fine of at least $250,000
First Offense: Trace of Heroin - Possession of 1 kg or more of a mixture with a small, but detectable amount of heroin	• imprisonment for 1 to 6 years, and the possibility • of a fine up to $5000
First Offense: Codeine - Possession - 200 mg	• imprisonment for up to 6 months, and the possibility, of • a fine up to $5000
Second Offense: Marijuana - Possession - 50 kg	• imprisonment for 3 to 20 years, and • a fine of at least $25,000
Third Offense - Methamphetamine - Possession - 100 g	• imprisonment for 3 to 20 years, and • a fine of at least $50,000

Cite: Nev. Rev. Stat. Ann. § 453.3395

Current Federal Penalties:

Group 1 and Group 2: . . . person shall be sentenced to prison which may not be less than 10 years or more than life and a fine not to exceed 4 million dollars.

Group 3: . . . person shall be sentenced to a term of imprisonment of not more than one year, a fine not exceed $250,000 in the case of an individual.

Group 4: . . . person shall be sentenced to a term of imprisonment of not more than 10 years, a fine not to exceed $500,000.

Group 5: . . . person shall be sentenced mandatory life imprisonment without release and fine not to exceed $8 million.

Cite: 21 U.S.C. § 841 (1992).

Lesson 6 & 7

1. **What does DWI stand for?**

Driving while intoxicated.

2. **What does DUI stand for?**

Driving under the influence. Under §484.379 it is unlawful for any person to drive while under the influence of intoxicating liquor or with a blood alcohol concentration of 0.10 or more.

3. **In terms of penalties, is being convicted of DWI more serious than being convicted of DUI?**

Nevada law does not distinguish between DWI and DUI.

4. **What are the penalties for being convicted of DWI? DUI?**

CONVICTION	PENALTY
first (within 7 years)	• pay tuition for an educational course on abuse of alcohol, and • imprisonment for 2 days to 6 months OR 48 hours of community service, and • fine of $200 to $1000
second (within 7 years)	• fine of $500 to $1000, and • imprisonment for 10 days to 6 months
third & subsequent offenses (within 7 years)	• fine of $2000 to $5000, and • imprisonment for 1 to 6 years

§484.379.

5. **What is the penalty for refusing to submit to a breathalyzer test upon a police officer's reasonable request?**

Under §484.382 any person who drives on the highways of Nevada consents to a breath test. Failure to submit will result in the immediate revocation of his/her license or permit for 90 days.

6. **What must a person's blood alcohol content (BAC) be before he/she is legally intoxicated.**

Under §484.381 one is legally intoxicated with a BAC of 0.10 or more.

7. **The legal limit for blood alcohol is lower for persons under the legal drinking age of 21. True or False?**

False. Nevada does not lower the BAC for persons under 21.

8. **An open container of alcohol can be in your car if you are 21 or over. True or False?**

False. Under §484.448 it is illegal for any person to drink an alcoholic beverage while driving and it is unlawful for a person to have an open container in his possession while driving on the highways/public roadways of Nevada.

Nevada Law

Lesson 9

Although the drinking age is 21 in all 50 states (meaning specifically that the sale of alcohol to minors is prohibited), the laws on teenage drinking vary from state to state. The laws vary in regard to whether they include prohibition of the purchase of alcohol, the attempt to purchase alcohol, the consumption of alcohol and the possession of alcohol. According to the **March 11, 1993 Safety Recommendation report of the National Transportation Safety Board,**

- Five states (DE, FL, MT, NH & NY) and the District of Columbia do not prohibit the purchase of alcohol by minors.
- West Virginia and the District of Columbia do not prohibit public possession of alcohol by minors.
- 23 states (AK, AR, DE, DC, FL, GA, RI, IL, IA, LA, ME, MD, MI, MS, MT, NV, NH, NY, SC, TX, UT, VT, VA) do not prohibit minors from attempting to purchase alcohol.
- 21 states (AR, CO, CT, FL, GA, HI, IA, KY, LA, MA, MS, MO, NE, NH, NM, NC, OR, SC, VT, WV, WY) do not prohibit alcohol consumption by minors.
- 16 states (AR, CA, CO, HI, KY, LA, ME, MI, NM, NY, NC, OK, SD, VA, WA, WY) do not prohibit minors from misrepresenting their age in order to purchase alcohol.
- 19 states (AL, AR, CO, DE, DC, IA, KS, LA, MD, MN, MT, NJ, OR, PA, SC, UT, VA, WA, WI) do not prohibit minors from presenting false ID to purchase alcohol.

In addition, most states do no prohibit minors from driving with alcohol in their blood unless their blood alcohol content reaches the adult legal limit, which is .10 percent in most states. Fifteen states, however, have amended their laws to lower for minors the permitted blood alcohol content while driving. These laws vary according to the age under which minors must be in order for the lower blood alcohol content to apply. Here is the layout for state laws on blood alcohol content for minors while driving:

0.00 BAC	0.01 BAC	0.02 BAC	0.04 BAC	0.05 BAC	0.06 BAC
AZ (<21)	NJ (<21)	ME (<21)	RI (<21)	CA (<18)	GA (<18)
NC (<19)		MD (<21)	NH (<21)	NM (<18)	
OR (<21)		OH (<18)			
UT (<21)		VT (<18)			
WI (<18)					

A number of states have tried to cut down on teenage driving accidents by implementing nighttime driving restrictions. The following states have some form of curfew for teenage driving:

ID: minors <16 can drive during the daytime only
IL: minors <17 cannot drive between 11pm-6am Mon-Thur and 12am-6am Fri-Sun
LA: minors <15 cannot drive between 11pm-6am Mon-Thur and 12am:6am Fri-Sun
MD: minors <16 cannot drive between 12am-5am
MA: minors <18 cannot drive between 1am-4am
NY: minors <18 cannot drive between 9pm-5am
PA: minors <18 cannot drive between 12am-5am
SD: minors <16 cannot drive between 8pm-6am.